



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

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September 16, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

JOINT DECLARATIONS WITH THE ADMINISTRATIVE OFFICE OF THE COURTS REGARDING TIMING OF COURTHOUSE TRANSFER AGREEMENTS (ALL DISTRICTS) (3 VOTES)

SUBJECT

This letter recommends Board authority for the Chief Executive Officer to execute various Joint Declarations with the California Judicial Council's Administrative Office of the Courts in order to limit the annual payments associated with the courthouse transfers.

IT IS RECOMMENDED THAT YOUR BOARD:

Authorize the Chief Executive Officer to execute Joint Declaration documents substantially similar to the Joint Declaration for the Airport Courthouse, upon approval as to form by County Counsel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Trial Court Facilities Act (SB 1732, Chapter 1082 of 2002—the Act) established the authority for the transfer of responsibility for court facilities from the counties to the State, with the State's interests represented by the Judicial Council of California. The Act has been subsequently amended, including by AB 1491 (Jones, Chapter 9 of 2008), which extends the transfer period through December 31, 2009.

"To Enrich Lives Through Effective And Caring Service"

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County work on the transfers of all 50 court facilities is virtually complete, including efforts related to assessment and documentation of present conditions, space and parking allocations, providing information to the Administrative Office of the Courts (AOC) in support of their due diligence process, calculation of the annual County Facilities Payment (CFP), negotiation of general terms and conditions of transfers, and drafting of a "template" agreement. The remaining transfers will be submitted to your Board for approval as the agreements are completed by the AOC.

The Act requires that, for each court facility transferred, the County develop and certify a CFP, which is the maintenance-of-effort payment. That CFP is based on an average of five base years of costs, and increased for inflation to the date of transfer. For court facilities that cannot be transferred by September 30, 2008, the CFP is inflated a second time, as a penalty to counties for delays, unless the AOC and the County sign joint declarations agreeing that the delay was not caused by the County's action or inaction.

Under the Government Code, the AOC and each county may jointly declare that:

- extraordinary circumstances exist that have prohibited successful execution of a transfer agreement;
- all relevant transfer documents have been timely submitted and reviewed by the county;
- the failure to execute a transfer agreement prior to September 30, 2008, is not caused by the action, inaction, or delay on the part of the county; and
- the agreement can reasonably be executed on or before December 31, 2008.

The Attachment, the "Joint Declaration of the Administrative Office of the Courts and the County of Los Angeles regarding Completion of the Transfer Agreement Documents for the Airport Courthouse," is an example of the approximately 45 Joint Declarations that the Chief Executive Office recommends be submitted for the yet-to-be-transferred court facilities. The law requires that "the county shall not arbitrarily or capriciously request a joint declaration without a good faith belief that the conditions for such a declaration are met." As this letter explains in further detail, the conditions have clearly been met by the County. In addition, the law requires that the AOC "shall not arbitrarily or capriciously decline to sign a joint declaration...if the conditions for such a declaration are otherwise met." Your Board's approval of the Joint Declarations that are the subject of this Board letter will save the County of Los Angeles from paying the additional annual penalty based on delays in the process.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we strengthen the County's fiscal capacity (Goal 4). The execution of the Joint Declarations is strictly a financial measure, and will not affect other aspects of the Courthouse Transfer.

FISCAL IMPACT/FINANCING

Transfer agreements that are executed on or after October 1, 2008, and on or before March 31, 2009, require the County to pay a penalty in addition to the inflationary penalty associated with each month's delay in executing the agreements. The second penalty is equal to the percentage change in the National Implicit Price Deflator for State and Local Government Purchases, as published by the Department of Finance, for the fiscal year in which the transfer agreement is executed as compared to the prior fiscal year. Although the Department of Finance's information suggests that the Deflator will be only 2.3 percent in the current fiscal year, the average for the last several years has been double that amount. Therefore, the annual savings to the County can be expected to be at least \$760,000, but potentially up to \$1.5 million as a result of execution of these Joint Declarations.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Under the Trial Court Facilities Act, the AOC and counties were given between July 1, 2003 and June 30, 2007 to complete the approximately 400 transfers statewide. Despite the increased costs to counties for each month after July 2003 that transfers were delayed, and although virtually no transfers were completed by March 2007, in any county, the AOC was able to convince the State Legislature that delays were the fault of the 58 counties. When AB 1491 (Jones) was passed earlier in 2008, the Legislature increased the penalties to counties for further delays, in order to encourage their cooperation. The County of Los Angeles needed no such encouragement, as the documents that the County could provide to advance the transfers had all been submitted to the AOC.

- In November 2007, the County met with the AOC to get their final concurrence on a simpler methodology for calculation of the CFPs, which had been conceptually agreed to several months earlier. All financial information was provided at that time, and the AOC directed that certain formatting changes be made for each court facility's CFP, where the financial information would be summarized for each facility.
- In December 2007, the County submitted CFPs for all courthouses using the new methodology. Since that time, CFPs have been updated to reflect negotiations regarding space usage and revenue sharing, and in a few instances, to correct errors that were found upon review.

- By December 2007, all documents requested by the AOC to support their due diligence review had been submitted by the County for two-thirds of the courthouses, with the remaining one-third completed by January 2008. Since that time, updated information has been submitted as it became known, or was created.
- Beginning in October 2007, County staff met with, and negotiated in good faith with, staff from the AOC to determine how space within each courthouse, as well as parking, should be allocated among the parties, how the costs and revenues would be allocated, and how requirements for determination of the managing party and other issues would be settled. In general, at the County's insistence, all such negotiations have followed "rules" that were applied consistently across the 50 courthouses and facilities.
- In July 2008, the AOC changed its interpretation of the date up to which the CFPs could be inflated, requiring the County to renegotiate how to address the date the transfer actually becomes effective, including how to work with various occupants.
- As of August 25, 2008, drafts of agreements for only 22 of the 50 courthouses have been completed by the AOC and provided to the County for review, correction of errors as compared with previously negotiated issues, and addressing new issues unique to each courthouse.
- As of August 25, 2008, the AOC continues to refine its perspective on how it shall take transfer of responsibility for occupants, and 33 environmental and health/life/safety reviews remain incomplete by the AOC, limiting the possibility of further transfers in the near future.

County staff continues to work cooperatively and in good faith to complete the remaining transfers as expeditiously as possible.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no change, except the financial savings, associated with the current recommendations.

The Honorable Board of Supervisors
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CONCLUSION

Please return one adopted, stamped copy of this letter to the Chief Executive Office for further processing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. T. Fujioka', with a stylized flourish at the end.

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DL:JSE
MV:tlh

Attachment

c: County Counsel
Auditor-Controller
Los Angeles Superior Court

**JOINT DECLARATION OF THE ADMINISTRATIVE OFFICE OF THE
COURTS**

AND THE COUNTY OF LOS ANGELES

**REGARDING COMPLETION OF THE TRANSFER AGREEMENT
DOCUMENTS**

FOR THE AIRPORT COURTHOUSE

The Administrative Office of the Courts (the "AOC") and the County of Los Angeles (the "County") jointly make the following declaration as of the _____ day of September, 2008, pursuant to Section 70321 of the California Government Code:

- (a) extraordinary circumstances exist that have prohibited successful execution of the transfer agreement contemplated for the Airport Courthouse prior to September 30, 2008;
- (b) the County timely submitted all relevant transfer documents, including but not limited to documents requested by the AOC pursuant to its due diligence process, and the County Facilities Payment calculation made pursuant to Sections 70351-70368 of the California Government Code;
- (c) the County and the AOC negotiated timely and in good faith such issues as the ownership, allocation of exclusive-use areas, building management and other issues necessary for the prudent transfer of responsibility and title for the Airport Courthouse;
- (d) the County timely reviewed all relevant transfer documents prepared by the AOC, including drafts of the contemplated transfer agreement and joint occupancy agreement for this courthouse;
- (e) the failure to execute a transfer agreement prior to September 30, 2008, is not caused by the action, inaction, or delay on the part of the County; and
- (f) the parties reasonably expect that the agreements can be executed on or before December 31, 2008.

[Signatures on following page.]

JUDICIAL COUNCIL OF CALIFORNIA

APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel

By: _____
Name: Rachel Dragolovich, Attorney

By: _____
Name: Grant Walker
Title: Senior Manager, Business Services
Administrative Office of the Courts

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Principal Deputy County Counsel

**COUNTY OF LOS ANGELES, a body
corporate and politic**

By: _____
Name: William T Fujioka
Title: Chief Executive Officer